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injuries sustained in attempting to change a car coupling while the cars were in motion, where a witness testified as to the danger of so doing if the cars were running three or four miles an hour, plaintiff's subsequent testimony that he was moving very slowly was admissible as rebuttal evidence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 712, 716.]

**8. Trial (§ 140 (1\*))—Credibility of Witness Changing Testimony Is for Jury.**—If a witness changes his testimony when testifying in rebuttal, his credibility is for the jury.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 974.]

Error to Circuit Court, Tazewell County.

Action by one Bates against the Carter Coal Company. Judgment for plaintiff, and defendant brings error. Affirmed.

*Chapman, Peery & Buchanan*, of Tazewell, for plaintiff in error.

*Greever, Gillespie & Divine*, of Tazewell, for defendant in error.

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WATSON v. BRUNNER.

Nov. 18, 1920.

[105 S. E. 97.]

**1. Appeal and Error (§ 959 (1\*))—Pleading (§ 236 (1\*))—Discretion to Be Used in Allowing Amendments.**—Under Code 1919, § 6104, granting leave to amend rests in the sound discretion of the court, and, where defendants have no reasonable ground to object, an appellate court will not reverse the trial court for allowing pleadings to be amended.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 427.]

**2. Equity (§ 267\*)—Discretion in Allowing Amendments Determined by Special Circumstances.**—In equity cases the allowance of amendments rests largely in the discretion of the court, to be determined by the special circumstances of the case, so that the ends of justice will not be sacrificed to mere form, or too rigid adherence to technical rules of practice; but amendments must not impede or embarrass the administration of justice.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 127.]

**3. Equity (§ 273\*)—New Cause Cannot Be Introduced by Amendment.**—A substantive cause, or a new cause different from that declared on in the original action, cannot be introduced by amendment.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 330.]

**4. Equity (§ 267\*)—No Abuse of Discretion in Permitting Amendment of Petition in Equity Case before Decree.**—Where original cause alleged was liability of owner of building to discharge debt due by contractor to plaintiff for materials furnished, plaintiff seeking to recover the amount in full from owner by establishing either a personal liability or by enforcing a mechanic's lien against the property, and the court held that plaintiff had no lien upon the property, and that, owing to plaintiff's failure to proceed according to requirements of the Code, his demand was not a personal liability against the owner, held, that court did not abuse its discretion in permitting plaintiff to amend, so as to show that there was an equitable assignment, by reason of an order on the owner, given by the contractor, of which the owner had notice.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 319.]

**5. Appeal and Error (§ 266 (1)\*)—Equity (§ 410 (4)\*)—Exceptions to Commissioner's Report Must Point Out Errors.**—Exceptions to a commissioner's report partake of the nature of special demurrers, and the party excepting must put his finger on the error, that the court may see what it is to decide; and it is too late to do this for the first time in the appellate court, unless the report is erroneous on its face.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 503.]

**6. Equity (§ 239\*)—Demurrer Admits Truth of Allegations of Fact.**—A demurrer admits to be true all the allegations of fact.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 460.]

**7. Appeal and Error (§ 1022 (3)\*)—Finding of Fact by Commissioner Given Weight.**—The report of a commissioner, except as to errors apparent on its face, is prima facie correct, and where the evidence is conflicting the appellate court will not reverse the action of the trial court, overruling exceptions to the report and confirming it, unless the findings of the commissioner are clearly erroneous.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 564.]

**8. Assignments (§ 94\*)—Duty of Debtor to Make Application of Money as Directed in Order.**—Where contractor executed an order on the owner of a building under construction to pay a certain amount of money to one furnishing material, it was the duty of the owner to make the application directed of the money due the contractor in his hands.

**9. Assignments (§ 50 (1)\*)—Order by Contractor on Owner of Building Held Equitable Assignment.**—An order by a contractor on the owner of a building under construction, "Please pay to B. \$750 on materials furnished for your residence and charge to my account," held an equitable assignment pro tanto of the fund in the hands of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the owner, then due or thereafter to become due to the contractor, where the owner had notice of its execution.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 759.]

Burks, J., dissenting.

Appeal from Law and Chancery Court of City of Roanoke.

Suit by W. C. Brunner against Z. T. Watson and another. From a decree in favor of the plaintiff, the named defendant appeals. Affirmed.

*C. S. McNulty*, of Roanoke, and *Morris L. Masinter*, of Richmond, for appellant.

*Jas. A. Bear*, of Roanoke, for appellee.

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ROBERTSON *v.* COMMONWEALTH.

Sept. 16, 1920.

[105 S. E. 215.]

**Taxation (§ 356\*)—Notes Given at Judicial Sale Subject to Assessment at Face Value, Notwithstanding Deduction Which Purchaser Might Make.**—Where the decree confirming a judicial sale of property provided that deferred purchase money notes should be applied, first, to the payment of a particular lien; next, to the payment of the receiver's debts; third, to payment of coupons; and, last, to payment of bonds—and that as to any class of lien, in place of paying cash, purchaser might apply any receipts or other indebtedness which he may hold against such class of liens, except the last, debts of the first and second class, held by the purchaser and intended to be applied on the notes, cannot, where they have not been applied and the deductions made, be deducted by the special commissioner holding the notes for the purpose of assessment of such property for taxation, for the tax is to be assessed pursuant to Acts 1916, c. 492, Acts Ex. Sess. 1915, c. 117, and Code 1904, § 492a, and the fact that an individual assessed under Acts Ex. Sess. 1915, c. 117, § 1, schedule C, § 8, class 1, is allowed to deduct his debts furnishes no reason for making similar deductions on property classed under class 3; the assessment not being against the maker of the notes, but against the funds in the hands of the special commissioner.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 103.]

Error to Circuit Court, Wise County.

Motion by W. H. Robertson, special commissioner, against the Commonwealth of Virginia, for correction of an erroneous

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.